

Fred Meyer Alaska, Inc. and United Food & Commercial Workers Union, Local 1496, AFL-CIO, Petitioner. Cases 19–RC–14049, 19–RC–14051, and 19–RC–14052¹

July 19, 2001

DECISION ON REVIEW AND ORDER
BY CHAIRMAN HURTGEN AND MEMBERS
TRUESDALE AND WALSH

On January 26 and February 8, 2001, the Regional Director for Region 19 issued Decisions and Directions of Elections in the above-entitled proceedings in which the Petitioner seeks to represent units of employees working in the meat and seafood departments of the Employer's Juneau and Fairbanks, Alaska stores. He found that the meat and seafood managers are not statutory supervisors within the meaning of Section 2(11) and thus, are properly included in the units found appropriate for collective bargaining. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, the Employer filed timely requests for review, maintaining that the meat and seafood managers are supervisors who must be excluded from the petitioned-for bargaining units because they have the authority to hire and to discipline employees in the meat and seafood departments, to schedule overtime work and to adjust grievances, as well as to assign and responsibly direct department employees in the performance of their duties. The Employer maintains that the meat and seafood managers in its Juneau and Fairbanks stores possess the same authority, duties, and responsibilities as the meat managers found by the Regional Director to be supervisors in the Employer's Anchorage stores.²

By Orders dated February 15 and 28, 2001, the Board granted the Employer's requests for review. The Petitioner filed a brief on review.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Having carefully reviewed the records in these cases,³ we find, contrary to the Regional Director, that the Juneau and Fairbanks meat and seafood managers are statutory supervisors within the meaning of Section 2(11) of the Act. In so concluding, we find that the meat and seafood managers in these stores, like the meat managers in

the Anchorage stores, exercise independent judgment in hiring employees and/or effectively recommending hiring for their respective departments.

I. FACTS

A. *The Employer's Operations*

The Employer operates 143 retail stores in six States, selling groceries, clothing, hardware, and other general merchandise. Eight Alaska stores (including one store in Juneau and two stores in Fairbanks) are part of its Puget Sound region—one of five administrative regions. It is undisputed that the Employer's operations basically are identical throughout the region. All stores have a common layout; wages are set centrally; each store has the same supervisory structure; and all employees receive the same benefits, have common work rules, and are covered by a common handbook and policies.

Store directors report to the regional director of stores, who in turn reports to corporate headquarters. Each store is divided into four "major departments" (food, apparel, home, and front end/office), each with a manager who reports to the store director. Submanagers or department heads report to the overall department manager. Thus, the meat and seafood managers in each store report to the store's food manager. The meat and seafood managers in the Juneau and Fairbanks stores, as well as the meat managers in the Anchorage stores, have overall responsibility for the operation of their respective departments. This includes meeting budgeted goals and sharing in bonuses awarded for the overall success of each store. The number of hours available for the meat and seafood departments are basically set by formula, and the meat and seafood managers determine the work schedules for their departments within these allocations. Once the budget is received, they can obtain additional hours by recommending any overtime they deem necessary to their food manager.

Hiring and disciplinary actions are handled at the individual store level; meat and seafood managers prepare annual evaluations; and the meat managers are responsible for training those employees who are hired with limited skills, and for assessing an employee's progress and readiness to move on to the next level within the department.

B. *Hiring Authority*

1. *Juneau and Fairbanks stores*

It is undisputed that each outside applicant for hire is required to take a "suitability test," which is administered by the store's applicant processor, and to pass a background test. While this usually occurs prior to the candidate's interview by the meat or seafood manager and/or the food manager, occasionally an individual may be

¹ The above-captioned cases have been consolidated for purposes of this decision only.

² In his Decision and Direction of Election issued September 19, 2000, in Case 19–RC–14004, the Regional Director found that the meat managers at the Employer's Anchorage stores were statutory supervisors. No party requested review of this finding. The supervisory status of the seafood managers was not at issue in that case.

³ The record in Case 19–RC–14004 was made part of the record in Cases 19–RC–14049, 19–RC–14051, and 19–RC–14052.

“recruited” or approached by a manager whose department has an opening and urged to speak to the applicant processor and then to interview. While the actual interview process (often including a cutting or “block” test) may vary slightly from store to store, it appears that, in almost all instances, the department managers interview on their own and make recommendations for hire to their respective food managers. In some of the stores, however, food and department managers have conducted joint interviews; and occasionally, a store manager has hired an employee for the meat department on his own initiative. In addition, any employee desiring a transfer into a meat or seafood department must secure the permission of the sending and receiving store, either of which may veto the request.

At the Juneau hearing, Food Manager Beverly Egan testified that her department managers have full authority to hire new employees, and that both the service deli manager and the seafood department manager have done so since she became food manager in September 2000.⁴ Egan stated that she would not conduct her own interviews, and would not undertake any independent evaluation or investigation of the candidate. Further, while there have not been any transfers into the meat department since she has been food manager, Egan noted that it would be up to the receiving manager to decide if the employee desiring a transfer were qualified, and, if so, whether the department’s budget could afford the hours. Egan stated that although Patrick Buettner, the store’s meat manager, has not had occasion to hire during Egan’s tenure, his authority is the same as that of the other subdepartment managers. Thus, if Buettner needed an employee in the meat department, he would tell her and they would talk to the store’s applicant processor, who would give Buettner applications that previously had been screened. Buettner would then do a “block” test. Egan stated that the meat manager would make the decision and would recommend the applicant for hire, or not, and that she would follow that recommendation.⁵

⁴ In the Anchorage proceeding, Bambi Collison, currently the assistant meat manager at the Dimond store in the Anchorage area, testified that when she was the meat manager in Juneau, she usually conducted interviews for the meat department “on her own” and the food manager (Egan’s predecessor) “just approved it.”

⁵ Buettner testified that when he was the assistant meat manager under Egan’s predecessor (Keith Flynn), he recruited Doug Drazkowski who was hired by Flynn. After becoming meat manager, Buettner sat in on interviews with Flynn. After Robby Markovich’s interview, Buettner told Flynn that he thought “the candidate had the qualifications they were looking for.” Flynn told Buettner that they needed to do more interviews and that he would let him know whom they were going to hire. Buettner sat in on a few more interviews, and subsequently, Markovich was hired.

Egan also testified that Juneau Seafood Manager Joon Kim interviewed and hired one employee in November 2000, and that she did not meet the individual until after he had been hired. At the time of the hearing, the seafood department was short one employee. Egan stated that Kim would be doing the interviewing for the position and would decide whom to hire, and that Egan would have no role in the hiring process.

At the Fairbanks hearing, David Atlee, food manager of the West Fairbanks store, testified that the responsibilities of his meat manager included hiring for the department. Dennis Preslan has been the meat manager at West Fairbanks since November 1997. Atlee stated that the meat manager has the final say in the hiring of meat department employees, and that he accepts Preslan’s decisions on hiring without any independent investigation. Specifically, according to Atlee, Preslan has identified the need for new employees in the meat department, and after the store’s prescreening was done, Preslan has effectively recommended the transfer, hiring, or rejection of several employees, including the transfer of an in-store courtesy clerk into the meat department, and the rejection of one applicant who had previously worked at the North Fairbanks location and of another who had been meat manager at an unrelated store.

Preslan testified that the transfer of Nathan Campbell, a former meat manager from Juneau, occurred based on his recommendation. Also, on two occasions when he needed cutters, Preslan said that he recruited individuals who he knew wanted to work for the Employer.

Atlee testified that the store’s seafood manager, Andre Martin, has hired at least three people into that department on his own. In addition, Martin requested the transfer of at least one employee from within the store into the seafood department, and agreed to hire Teresa Snodgrass, an applicant with extensive seafood experience who had first contacted Atlee. With regard to Snodgrass’ hire, Atlee testified that he presented her application to Martin and told him of her prior experience, but that Martin made the decision to hire her. On another occasion, according to Atlee, Martin recommended one of his own employees (Tim Kimbrough) for a transfer/promotion to the seafood manager position at the North Fairbanks store. Although Martin did not testify, Atlee’s statements regarding Martin’s role in hiring were not contradicted.

North Fairbanks Food Manager Marc Beauchamp testified that his meat and seafood managers have the “complete role” as far as hiring. He stated that he has always taken their recommendations, and has never done an independent investigation. Seafood Manager Tim Kimbrough stated that he had interviewed and hired Annie Ferraro,⁶ and that he had arranged one transfer into his department with the “assistance” of Beauchamp and the assistant food manager.

Brian Hughes, meat manager in the North Fairbanks store, testified that while he does not do any interviews by himself, he has sat in on interviews with Beauchamp and has made specific recommendations regarding hiring which typically have been followed. The record shows that Hughes also approved the transfer of two in-store clerks into his department, and he acknowledged that Beauchamp told him, “it’s your call.” Both Hughes, and the West Fairbanks meat manager, Preslan, responded affirmatively when asked whether they were “in charge of” their departments. Similarly, Seafood Manager Kimbrough testified that “everything that is done in the [North Fairbanks seafood] department comes down to me.”

2. Anchorage stores—Case 19–RC–14004

Witnesses from each of the Employer’s four Anchorage-area stores (Wasilla, Dimond, Anchorage East, and Northern Lights) testified as to the role of the meat managers in hiring employees for their departments.

Jack Molenkamp, food manager at the Wasilla store, stated that position openings are posted on the “employment board” in several stores, and that he and Wasilla Meat Manager Steve Hughes conduct the interviews. According to Molenkamp, Hughes is the expert in the area, and “he makes the choice of who we—who we decide.” Fred Sayre, currently the food manager at the Dimond store, noted that although all hiring is “store specific,” initial staffing at the Wasilla store was unusual because it was a “grand opening” store with 300 positions to be staffed. This resulted in a number of transfers by employees who lived close to that location, including at least one meat department employee who transferred from the Northern Lights store and who did not meet Hughes until his first day of work. The employee, however, had discussed his request to transfer with the regional meat specialist as well as the Northern Lights meat manager.

⁶ Kimbrough testified that he was being pressured by Beauchamp to add another employee to the seafood department, and that while he “wasn’t completely satisfied with Ferraro,” he needed to hire somebody and she was the only person available at the time. Kimbrough was the only one who interviewed her, and there is no evidence that Beauchamp told Kimbrough when to hire.

Sayre, who worked in a number of positions and departments in the Juneau and Anchorage East stores before becoming food manager at the Dimond store, testified also that transfers generally would be at the discretion of the individual store. Sayre stated that he would accept the recommendation of his meat manager, Ken Morris, after Morris had interviewed the individual interested in transferring. Further, he would take Morris’ recommendation on permanent hires, and would not interview the candidates or conduct his own investigation of an applicant. “He [Morris] is the expert on what he needs—his needs and the needs for the company.” Joe James testified that he had been hired by Morris. James stated that he had heard through the “meatcutters’ grapevine” that there might be a position at Dimond and contacted Morris. James had an informal interview with Morris, who then turned James over to the store’s applicant processor, and he was hired.

Also, at the Anchorage hearing, Beverly Egan, who was then the assistant food manager at the Anchorage East store, testified that her store’s meat manager (Bruce Gannon) hired or recommended hiring for his department. She gave one example of Gannon’s recommending an applicant’s hire for a journeyman’s position after having performed a block cut/test for Gannon.

Markaye Simpson, food manager in the Northern Lights store, testified that he would accept his meat manager’s recommendations on transferring and hiring. Simpson provided two examples. In one case, the meat manager advised Simpson that there was someone he wanted to bring in. According to Simpson, “the next thing I knew was the guy had been working for two days and there he was. He [the meat manager] has full authority.” In another example, Simpson stated that the meat manager knew that an employee was “floundering a bit” in the grocery department, and told Simpson that the employee “would be a great part of their team back there and that he could grow him and train him in their environment.” Simpson approved the transfer into the meat department.

II. ANALYSIS

The term “supervisor” is defined in Section 2(11) as:

[A]ny individual having authority, in interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

To meet this definition, a person needs to possess only one of the specific criteria listed, or the authority to effectively recommend, as long as the performance of that function is not routine but requires the use of independent judgment. See *Pepsi-Cola Co.*, 327 NLRB 1062, 1063 (1999); *Union Square Theatre Management*, 326 NLRB 70 (1998). Thus, the authority to hire or to effectively recommend hiring, utilizing independent judgment, is itself sufficient to confer statutory supervisory status. See, e.g., *Queen Mary*, 317 NLRB 1303 (1995); *enfd. sub nom. NLRB v. RMS Foundation, Inc.*, 113 F.3d 1242 (9th Cir. 1997).

The Regional Director found that the meat managers in the Employer's four Anchorage stores were statutory supervisors within the meaning of Section 2(11) of the Act, based, *inter alia*, on their role in the Employer's hiring process.⁷ In the instant cases, however, the Regional Director concluded that the evidence was insufficient to support such a finding. We disagree. We find that the records demonstrate that the meat and seafood managers in Juneau and Fairbanks are statutory supervisors who exercise independent judgment in hiring or effectively recommending the hiring of employees in their respective departments, in the same manner as the meat managers in the Employer's Anchorage stores.⁸

Contrary to the Regional Director, hiring in the various meat and seafood departments of the Employer's stores follows a general pattern, rather than being governed by so-called "haphazard" practices. Although the Regional Director found the evidence lacking in details, we find, to the contrary, that the Employer has provided sufficient evidence of specific instances of hiring to meet its burden of establishing that the meat and seafood department managers in the Juneau and Fairbanks stores possess the authority to hire and/or make effective recommendations with regard to hiring.

The uncontradicted testimony of Food Managers Egan, Atlee, and Beauchamp, as well as that of Meat and Seafood Managers Preslan, Kimbrough, and Hughes, demonstrates that most of the Juneau and Fairbanks meat and seafood managers have interviewed applicants on their own and have exercised the authority to hire and/or to effectively recommend hiring for their departments.

⁷ The Regional Director found that the Anchorage meat managers possessed the authority to at least effectively recommend action with regard to hiring, disciplining, and evaluating. In the instant cases, since we find that the authority to hire and/or effectively recommend hire alone renders the meat and seafood managers statutory supervisors, we do not pass on the other alleged statutory indicia.

⁸ The rule clearly is established in Board precedent that *possession* of authority consistent with any of the indicia of Sec. 2(11), is sufficient to establish supervisory status, even if this authority has not yet been exercised. See, e.g., *Pepsi-Cola*, *supra*.

Thus, Juneau Seafood Manager Joon Kim interviewed and hired an employee who was on board before Egan actually met him; West Fairbanks Meat Manager Dennis Preslan has effectively recommended the transfer, hire, or rejection of several employees; West Fairbanks Seafood Manager Andre Martin has hired at least three employees and has requested the transfer of another employee into his department; and North Fairbanks Seafood Manager Tim Kimbrough hired one employee and arranged a transfer for another. North Fairbanks Meat Manager Brian Hughes participated in several interviews and has made specific recommendations that have been followed.⁹

The record further establishes that the meat and seafood managers' exercise of hiring authority is neither routine nor clerical in nature, but involves the use of independent judgment. In this regard, the uncontradicted testimony established that the meat and seafood managers make their hiring decisions and recommendations based on their own assessments of what skills are needed and whether the individuals they are considering hiring have the appropriate skills or qualifications.

Based on the records in these case, we find that the role of the Juneau and Fairbanks meat and seafood managers in the Employer's hiring process is consistent with that of the Anchorage meat managers found by the Regional Director to be statutory supervisors in Case 19-RC-14004. Thus, we conclude that the meat and seafood managers in the Juneau and Fairbanks stores are statutory supervisors within the meaning of Section 2(11) of the Act. *Union Square Theatre Management*, *supra*; *Queen Mary*, *supra*.

ORDER

The Regional Director's Decisions and Direction of Elections are reversed. The meat and seafood managers

⁹ Further, although Juneau Meat Manager Patrick Buettner testified only as to his limited participation in hiring under Egan's predecessor, no one disputes the testimony of the current Juneau food manager, Beverly Egan, as to the authority Buettner possesses under her management. Thus, Egan stated what she will expect Buettner to do when there is an opening in the Juneau meat department, and she noted that two of his fellow department managers (seafood and service deli) already have hired for their departments exercising this authority in the same manner.

in the Employer's Juneau and Fairbanks stores are excluded from the unit found appropriate for collective bargaining. The cases are remanded to the Regional Di

rector for further appropriate action consistent with this decision.